THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.23772 OF 2005

31st July 2006

Between:

Government of Andhra Pradesh,
Agriculture & Cooperation (Vigilance Cell.II)
Department, represented by its
Agriculture Production Commissioner & Principal
Secretary to Government, Secretariat,
Hyderabad and another.

.. Petitioners.

And

M.V. Ramana Prasad.

.. Respondent.

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AND

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WRIT PETITION No.23772 OF 2005

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

In this Writ Petition, the petitioners, who are the Government and the Department concerned, seek Writ of Certiorari assailing the order dated 23.12.2004 in O.A.No.1570 of 2002 before the A.P. Administrative Tribunal at Hyderabad allowing the application filed at the instance of the respondent herein, who has been working as Assistant Director, Horticulture, Kurnool and setting aside the orders passed in G.O.Ms.No.311 Agriculture & Cooperation (Vig.Cell.II) Department, dated 07.12.2001 whereunder the respondent was sought to be imposed punishment of stoppage of two annual grade increments with cumulative effect besides recovery of an amount of Rs.7,32,408/- (Rupees seven lakh thirty two thousand four hundred and eight only).

Facts, which are necessary for disposal of this case, are that in pursuance of initiation of disciplinary proceedings laid against the respondent herein, the articles of charge dated 21.08.1996 were issued containing six charges which, *inter alia,* making an attribution

of not following the instructions in regard to certain schemes and exceeding the targeted number of coconut seedlings, violation of the guidelines of the scheme and purchasing the coconut seed from a private grower. The respondent had filed a representation on 27.09.1996 before the first petitioner seeking to inspect the records and for supply of copies thereof. However, there was no response. As per the proceedings dated 20.12.1996 issued by the Joint Secretary, an Enquiry Officer was appointed, which according to the respondent, is without jurisdiction since the competent authority is the Principal Secretary. The said Enquiry Officer, without properly conducting enquiry or providing an opportunity to the respondent, submitted report dated 27.04.1998 holding that out of six, five charges were proved and recommending provisionally for imposition of punishment of stoppage of two annual grade increments with cumulative effect apart from recovery of a sum of Rs.7,32,408/- (Rupees seven lakh thirty two thousand four hundred and eight only). However, basing on the report, a show cause notice was issued and in response, the respondent submitted his reply. Without properly considering the reply and without there being any enquiry, the impugned order was passed on 07.12.2001 confirming the above said punishment. The main submission according to the respondent is that the entire procedure as adopted is in the teeth of the mandatory provisions under the

Classification, Control and Appeal Rules (for brevity 'CCA Rules'). There being no proper enquiry and any opportunity much less furnishing the documents and that too by the incompetent officer, the entire process is wholly bad.

On contest by the petitioners where they have filed a detailed counter-affidavit, *inter alia,* denying the entire allegations and pointing out that the respondent was, in fact, permitted by the Enquiry Officer to verify all the connected records before giving reply and the procedure as contemplated under the Rules has been duly followed. Therefore, no complaint as such can be made. It was further submitted that the copy of the enquiry report was supplied to the respondent with the show cause notice on 27.04.1998.

Considering these submissions and on perusal of the material on record, the Tribunal found that there has been a clear violation of the mandatory procedure as contemplated under Rule 20 (3) (ii) (b) of CCA Rules for non-furnishing the documents. Even as per Clause (14) of Rule 20 of the said CCA Rules, no witnesses have been examined nor any opportunity as such is provided to the respondent, hence, there has been a total gross violation in follow up procedure as per law and thus, the entire proceedings are vitiated and ultimately allowed the application by setting aside the impugned order of imposing the

aforesaid punishment. Hence, the Writ Petition.

Having heard the learned Government Pleader for Services-I appearing on behalf of the petitioners and Sri M. Surender Rao, the learned counsel appearing on behalf of the respondent, the main question which arises for consideration, in the facts and circumstances, is as to whether there has been any lapse in the procedure followed by the petitioners as contemplated under Rule 20 of the APCCA Rules ?

There is no serious dispute in regard to the chequered events leading to imposition of punishment as per the impugned proceedings dated 07.12.2001. The dates themselves speak the events as commenced with the issuance of the articles of charge dated 21.08.1996. There is no denial in regard to the filing of the representation by the respondent on 27.09.1996 seeking for furnishing the documents and the record for perusal and to that effect, there was no response from the petitioners' side. The Enquiry Officer was appointed on 20.12.1996. Admittedly, no enquiry conducted by the said Officer on any particular date or giving any such date of hearing up notice much less an opportunity either way in production of evidence from the Department side or even that of the respondent. Ultimately, the Enquiry Officer submitted report on 27.04.1998 followed by the issuance of show cause notice and filing of the explanation by

the respondent on 05.07.1998 and the ultimate orders were issued on 07.12.2001. In this connection, it is relevant to note the main sub-clauses (14) and (15) of Rule 20 of the A.P. CCA Rules, which read as follows:

> " (14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.
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> (15) If it shall appear necessary before the closure of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it so of the opinion that the production of such evidence is necessary in the interest of justice."

On a bare reading of the aforesaid provision, it clearly mandates a comprehensive enquiry to be conducted and where necessarily the oral and the documentary evidence to be taken in support of the

articles of charge and also due examination of the witnesses on behalf of the Presenting Officer, who has been necessarily permitted to be cross-examined by the delinquent. The procedure includes re-examination of the witnesses and again cross-examination if it warrants. It further contemplates that the inquiring authority has to give opportunity to the delinquent for inspection of the record and also for production of any evidence on his behalf. Thus, the entire inquiry procedure is comprehensive enough to enable both the sides to lead evidence in support, and in rebuttal and without which, the question of coming to any conclusion does not arise. In this case, admittedly no such enquiry was conducted, no evidence was produced on behalf of the Department nor there is any attempt to allow such cross-examination by the respondent. Even the respondent is not permitted to produce any evidence on his behalf in rebuttal that apart the application filed by the respondent for perusal of the record and supply has remain un-considered nor there is any such opportunity provided even for perusal. Above all, the Enquiry Officer did not fix any particular date of hearing either for holding such enquiry or for taking evidence or for perusal or for furnishing of documents muchless for production of any evidence on behalf of the respondent. On the face of it, the entire procedure as adapted to is in the teeth of the mandate as contemplated thereunder. It is needless to re-iterate that when the

statutory rules do contemplate such comprehensive enquiry, the same cannot be given go by and no employee can be permitted to mulct against any imputation or any finding thereon. The due process as contemplated thereunder is only on the lines of the observation of the principles of natural justice before a person is condemned which cannot be found fault with nor can there be any escape either way. We are in entire agreement with the reasons as given by the Tribunal and the entire impugned action as rightly held is in utter violation and disregard to the mandatory procedure as contemplated thereunder. Hence, we do not find any merits in the above Writ Petition.

The Writ Petition is, accordingly, dismissed. However, in the circumstances, no costs.

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B. PRAKASH RAO, J

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RAMESH RANGANATHAN, J

31st July 2006.
Chvn.